

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA,

Plaintiff,

No. 8:19-PO-106 (CFH)

v.

ERIK GALEANA-SANCHEZ,

Defendant.

APPEARANCES:

DOJ - Office of the United States Attorney
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Room 340
Plattsburgh, New York 12901

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OF COUNSEL:

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Assistant United States Attorney

GEOFFREY S. STEWART, ESQ.

**CHRISTIAN F. HUMMEL
U.S. MAGISTRATE JUDGE**

MEMORANDUM-DECISION AND ORDER

Presently pending before the Court, in this criminal proceeding against Erik Galeana-Sanchez ("defendant") for improper entry by an alien in violation of 8 U.S.C. § 1325, is defendant's pretrial motion to suppress statements obtained by police and border patrol agents following a traffic stop pursuant to Rule 12(b)(3)(C) of the Federal Rules of Criminal Procedure ("Fed. R. Crim. P."). Dkt. No. 4. The Government has opposed defendant's motion. Dkt. No. 6. For the reasons that follow, defendant's

motion is denied.

I. Background

At approximately 11:30 p.m. on April 25, 2019, United States Border Patrol Agent Jon Dumas observed a grey Mazda SUV traveling east on Route 11 away from the Akwesasne Mohawk Indian Reservation toward Interstate 87. Dkt. No. 6 at 3; Dkt. No. 6-1 (“Ex. 1”) ¶ 2. Agent Dumas recognized the car’s registration number as designating a New York City taxi cab vehicle. Id. The Government alleges that “[b]ased on [Agent Dumas’] knowledge and experience, taxi cabs are often used by illegal aliens to travel from the Canadian border to New York City.” Dkt. No. 6 at 3; see Ex. 1 ¶ 2. Agent Dumas observed the driver of the vehicle travel at various speeds above and below the posted speed limit and cross the driving lane while negotiating turns, in violation of New York State Vehicle and Traffic Law. Dkt. No. 6 at 3-4; Ex. 1 ¶ 3. Because of these observations, Agent Dumas requested a marked U.S. Border Patrol vehicle to conduct a traffic stop, as his unmarked vehicle was not equipped with lights and sirens. Dkt. No. 6 at 5 n.3. A New York State Trooper, Officer Liberty, began to follow the vehicle in a marked police vehicle as it continued onto Interstate 87 South. Id. at 5. After observing the vehicle “fail to maintain its position in the lane of travel,” the Trooper initiated a traffic stop. Id.; Ex. 1 ¶ 5. Agent Dumas assisted in the stop in a backup role. Dkt. No. 6 at 5; Ex. 1 ¶ 6.

Officer Liberty requested the driver’s license, and, on discovering that said license was suspended, Officer Liberty placed the driver under arrest. Dkt. No. 6 at 5.

Officer Liberty attempted to communicate with the four passengers in the car, but could not as they did not speak English, and appeared to be speaking Spanish. Id. Agent Dumas then asked the passengers if they spoke Spanish and requested identification from the passengers in Spanish. Id.; Ex. 1 ¶¶ 6-7. Agent Dumas asked the defendant for identification, and the defendant informed plaintiff that he did not have identification because he was from Mexico. Id.; Ex. 1 ¶ 7. Agent Dumas asked defendant if he had any documentation that would allow him to be in the United States, and defendant responded that he did not. Id. Agent Dumas placed defendant under arrest, and transported him to the Massena, New York Border Patrol Station for processing. Dkt. No. 6 at 6; Ex. 1 ¶ 7-8.

II. Discussion

“A traffic stop is a limited seizure within the meaning of the Fourth and Fourteenth Amendments to the United States Constitution.” United States v. Garcia, 279 F. Supp. 2d 294, 298 (S.D.N.Y. 2003) (citing Delaware v. Prouse, 440 U.S. 648, 653 (1979)) (other citations omitted). “Therefore, in order to stop a car, the police must have either probable cause or a reasonable suspicion, based on specific and articulable facts, of unlawful conduct.” Garcia, 279 F. Supp. 2d at 298 (citations and internal quotations omitted). “Evidence seized incident to an unlawful traffic stop is subject to the fruit of the poisonous tree doctrine, and may be suppressed.” Garcia, 279 F. Supp. 2d at 298 (citation and internal quotations omitted).

“Probable cause arises when the police reasonably believe that ‘an offense has

been or is being committed.” United States v. Scopo, 19 F.3d 777, 781 (2d Cir.), cert. denied, 513 U.S. 877 (1994) (quoting United States v. Cruz, 834 F.2d 47, 50 (2d Cir. 1987), cert. denied, 484 U.S. 1077 (1988)). “When an officer observes a traffic offense – however minor – he has probable cause to stop the driver of the vehicle.” Scopo, 19 F.3d at 782. The undersigned notes that “the officer’s subjective intent in stopping the car is immaterial, [because] ‘an observed traffic violation legitimates a stop even if the detectives do not rely on the traffic violation.’” Garcia, 279 F. Supp.2d at 298 (quoting United States v. Dhinsa, 171 F.3d 721, 725 (2d Cir. 1998)). “In other words, an officer’s use of a traffic violation as a pretext to stop a car in order to obtain evidence for some more serious crime is of no constitutional significance.” United States v. Dhinsa, 171 F.3d 721, 724–25 (2d Cir. 1998).

A. Whether the Traffic Stop was Justified

Defendant argues that he was unlawfully stopped and detained with no indication “of a violation of traffic regulations, criminal activity and without probable cause, warrant or exigency and by virtue of unreliable tip or racial profiling.” Dkt. No. 4 at 8. The Court disagrees. Agent Dumas affirmed that he observed the grey Mazda “travel[ing] at varying rates of speed above and below the posted speed limit” and “consistently crossing over lanes as the vehicle proceeded” along the road. Ex. 1 ¶ 4. Agent Dumas stated that this conduct, however minor, violated New York Vehicle and Traffic Laws. Id. Because he was in an unmarked car, Agent Dumas contacted the New York State Police to conduct the traffic stop. Id. ¶ 5. As stated, when a police officer observes

even a minor traffic offense, he or she has probable cause to stop the driver of a vehicle. See Scopo, 19 F.3d at 782. Defendant states that the driver of the vehicle “appeared to be operating the vehicle in accordance with all applicable New York State Vehicle and Traffic Law regulations,” Dkt. No. 4 at 2; however, the undersigned agrees with the Government that the defendant has offered no support for this allegation. See Dkt. No. 6 at 6-7. Therefore, because Agent Dumas observed the vehicle violating vehicle and traffic laws, the undersigned finds that he had probable cause to stop the vehicle, and the traffic stop was justified.

Even assuming that Agent Dumas did not have probable cause to stop the vehicle, the undersigned finds that reasonable suspicion existed to justify the stop. The Second Circuit describes a Terry stop as “the least intrusive means reasonably available to verify or dispel the officer’s suspicion in a short period of time, and can be supported by reasonable suspicion, instead of probable cause.” Posr v. Doherty, 944 F.2d 91, 98 (2d Cir. 1991) (citations and quotation marks omitted). “Reasonable suspicion arises when a law enforcement officer is in possession of ‘specific and articulable facts which, taken together with rational inferences from those facts, provide detaining officers with a particularized and objective basis for suspecting wrongdoing.’” United States v. Compton, No. 8:13-CR-405-1, 2014 WL 12674478, at *4 (N.D.N.Y. Sept. 9, 2014), aff’d, 830 F.3d 55 (2d Cir. 2016) (quoting United States v. Bailey, 743 F.3d 322, 332 (2d Cir. 2014)). Reasonable suspicion requires “only facts sufficient to give rise to a reasonable suspicion that criminal activity ‘may be afoot’ and that the person stopped ‘may be armed and presently dangerous.’” Bailey, 743 F.3d at 332

(quoting Terry v. Ohio, 392 U.S. 1, 30 (1968)). “Moreover, while a reviewing court cannot merely defer to police officers’ judgment in assessing reasonable suspicion, the court must view the totality of the circumstances ‘through the eyes of a reasonable and cautious police officer on the scene.’” Id. (quoting United States v. Bayless, 201 F.3d 116, 133 (2d Cir. 2000)).

The Supreme Court of the United States has held that

[a]ny number of factors may be taken into account in deciding whether there is reasonable suspicion to stop a car in the border area. Officers may consider the characteristics of the area in which they encounter a vehicle. Its proximity to the border, the usual patterns of traffic on the particular road, and previous experience with alien traffic are all relevant. They also may consider information about recent illegal border crossings in the area. The driver’s behavior may be relevant, as erratic driving or obvious attempts to evade officers can support a reasonable suspicion. Aspects of the vehicle itself may justify suspicion In all situations the officer is entitled to assess the facts in light of his experience in detecting illegal entry and smuggling.

United States v. Brignoni-Ponce, 422 U.S. 873, 884-85 (1975).

Here, the undersigned agrees with the Government that Agent Dumas had, at the very least, “reasonable suspicion that criminal activity may be afoot.” Bailey, 743 F.3d at 332 (citation and internal quotations omitted). Agent Dumas affirmed that he initially observed the vehicle late at night, traveling in a rural area near the Canadian border known for human smuggling. Ex. 1 ¶¶ 2-3. The vehicle that the defendant was traveling in was registered as a New York City taxi cab. Id. ¶ 3. Agent Dumas stated that, in his experience as a border patrol agent, taxis are frequently used to transport illegal aliens into the United States. Id. Moreover, Agent Dumas stated that he

observed the car traveling at varying rates of speed and crossing into the opposite lane, which, in his experience, indicated that the driver was unfamiliar with the area. Id. ¶ 4. The undersigned concludes that these facts, taken together, amount to “specific and articulable facts which, taken together with rational inferences from those facts, provide[d] [Agent Dumas] with a particularized and objective basis for suspecting” an alien smuggling event. Compton, 2014 WL 12674478, at *4 (citation and internal quotation marks omitted). Accordingly, the Court finds that Agent Dumas was entitled to effectuate a stop.

Moreover, as the Government notes, Agent Dumas’ reasonable suspicion was imputed to Officer Liberty, who actually initiated the stop, because, even though Officer Liberty may have lacked the information necessary to form the reasonable suspicion, Agent Dumas had the requisite knowledge and initiated the call for the traffic stop. See United States v. Colon, 250 F.3d 130, 135 (2d Cir. 2001); Ex. 1 ¶ 5; Dkt. No. 6 at 9.

Accordingly, the Court finds that Agent Dumas had reasonable suspicion of alien smuggling to effectuate a traffic stop, and the April 25, 2019 traffic stop was justified.

B. Whether the Defendant’s Statements Should be Suppressed

Defendant argues that any incriminating statements he made concerning his immigration status should be suppressed as “fruit of the poisonous tree,” as such statements “taken from defendant were not incident to a lawful arrest.” Dkt. No. 4 at 8. The undersigned has determined that Agent Dumas had both probable cause and reasonable suspicion to effectuate the April 25, 2019 traffic stop. See supra.

To the extent that defendant contends that the statements should be suppressed because he was not read his Miranda rights, this argument must fail. See Dkt. No. 4 at 8. “The purpose of the Miranda warning is to ensure that the person in custody has sufficient knowledge of his or her constitutional rights relating to the interrogation and that any waiver of such rights is knowing, intelligent, and voluntary.” United States v. Carr, 63 F. Supp. 3d 226, 234-35 (E.D.N.Y. 2014) (citation and internal quotation marks omitted). “However, [a]n interaction between law enforcement officials and an individual generally triggers Miranda’s prophylactic warnings [only] when the interaction becomes a ‘custodial interrogation.’” Id. (citation and internal quotation marks omitted). Nevertheless, both the Supreme Court, and courts in this Circuit, have found that “persons temporarily detained pursuant to such stops are not ‘in custody’ for the purposes of Miranda.” Berkemer v. McCarty, 468 U.S. 420, 440 (1984); United States v. Mack, No. 5:14-CR-28, 2014 WL 7140604, at *12 (D. Vt. Dec. 12, 2014) (quoting Berkemer, 468 U.S. 440) (“Defendant was not in custody at the time of the initial traffic stop because ‘persons temporarily detained pursuant to [traffic] stops are not “in custody” for the purposes of Miranda.’”); United States v. Mitchell, No. 11-CR-6019, 2012 WL 6827387, at *10 (W.D.N.Y. Nov. 27, 2012), report and recommendation adopted 2013 WL 132459 (W.D.N.Y. Jan. 9, 2013) (citation and internal quotation marks omitted) (“The Court stated that the non-threatening and noncoercive character of ‘ordinary traffic stops prompts us to hold that persons temporarily detained pursuant to such stops are not ‘in custody’ for purposes of Miranda.’”).

Here, the undersigned finds that defendant was not “in custody” pursuant to

Miranda. Agent Dumas affirmed that he approached the vehicle after Officer Liberty informed him that the passengers did not speak English, only Spanish. Ex. 1 ¶ 6. Agent Dumas, who spoke Spanish, asked the passengers if they spoke Spanish, and they stated that they did. Id. After noticing the passengers' wet and muddy clothing, which, in Agent Dumas' experience, is consistent with an alien smuggling scenario, he asked each of the passengers, including the defendant, whether they were from Mexico and whether they had immigration paperwork. Id. Defendant stated that he was from Mexico, and that he did not have immigration documents to be in the United States. Id. Although the undersigned acknowledges that, depending on the officer's conduct, an initial stop may "evolve[] into a situation indistinguishable from an arrest, Mack, 2014 WL 7140604, at *12 (citation omitted), Agent Dumas' conduct during the April 25, 2019 traffic stop was consistent with the generalized questions concerning citizenship and immigration status that officers are permitted to ask drivers and passengers of a stopped vehicle in immigration scenarios. See Brignoni-Ponce, 422 U.S. at 881. There is no indication that Agent Dumas interrogated the defendant; in fact, he affirmed that he did not ask the defendant any further questions after the defendant confirmed that he did not possess any immigration documents. Ex. 1 ¶ 7.

Further, as the Government notes, Agent Dumas' inquiry into defendant's citizenship and immigration status did not prolong the stop or venture into matters unrelated to the purpose of the stop. See Dkt. No. 6 at 14 (citing cases). Moreover, insofar as the defendant contends that Agent Dumas "ordered [he and the other passengers] out of the vehicle," Dkt. No. 4 at 2, Agent Dumas was within his right to do

so because, as the undersigned determined supra, the stop was reasonable. See United States v. Gaines, 457 F.3d 238, 243 (2d Cir. 2006) (finding that an officer may order the occupant of a vehicle out of the vehicle if the stop was reasonable); United States v. Quinones, No. 13-CR-83S, 2015 WL 6696484, at *14 (W.D.N.Y. Nov. 2, 2015) (“Officers conducting a lawful traffic stop may order a car’s occupants out of the vehicle[.]”).

For the reasons state herein, defendant’s statements should not be suppressed. As the undersigned concludes that there are no disputed issues of fact concerning whether the April 25, 2019 traffic stop was justified, there is no need for the Court to conduct an evidentiary hearing as to whether defendant’s statements should be suppressed. See U.S. v. RW Professional Leasing Services Corp., 317 F. Supp. 2d 167 (E.D.N.Y. 2004).

III. Conclusion

WHEREFORE, for the reasons stated herein, it is hereby

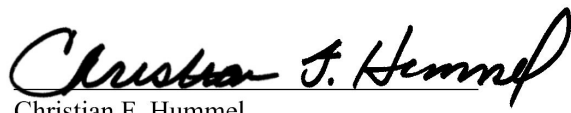
ORDERED, defendant’s motion to suppress his statements (Dkt. No. 4) is

DENIED; and it is further

ORDERED, that the Clerk of the Court serve a copy of this Memorandum-Decision and Order on all parties in accordance with Local Rules.

IT IS SO ORDERED.

Dated: June 21, 2019
Albany, New York


Christian F. Hummel
U.S. Magistrate Judge